



February 15, 2008

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## ENGROSSED SENATE BILL No. 345

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DIGEST OF SB 345 (Updated February 13, 2008 3:01 pm - DI 101)

**Citations Affected:** IC 6-8.1; IC 22-4; IC 31-25; IC 34-30.

**Synopsis:** Collection of unemployment contributions. Requires the department of workforce development to operate a data match system with financial institutions doing business in Indiana for use only in the collection of unpaid final assessments of employer contributions for the state's unemployment insurance system. Makes conforming amendments.

**Effective:** Upon passage.

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### Weatherwax

(HOUSE SPONSORS — NIEZGODSKI, TYLER)

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January 14, 2008, read first time and referred to Committee on Pensions and Labor.  
January 24, 2008, amended, reported favorably — Do Pass.  
January 28, 2008, read second time, amended, ordered engrossed.  
January 29, 2008, engrossed. Read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

February 4, 2008, read first time and referred to Committee on Financial Institutions.  
February 14, 2008, reported — Do Pass.

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ES 345—LS 6832/DI 102+



February 15, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 345

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-8.1-8-8.7, AS ADDED BY P.L.226-2007,  
2       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: Sec. 8.7. (a) The department shall operate a data  
4       match system with each financial institution doing business in Indiana.

5       (b) Each financial institution doing business in Indiana shall provide  
6       information to the department on all individuals:

7               (1) who hold one (1) or more accounts with the financial  
8               institution; and

9               (2) upon whom a levy may be issued by the department or a  
10              county treasurer.

11       (c) To provide the information required under subsection (b), a  
12       financial institution shall do one (1) of the following:

13              (1) Identify individuals by comparing records maintained by the  
14              financial institution with records provided by the department by:

15                      (A) name; and

16                      (B) either:

17                              (i) Social Security number; or

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ES 345—LS 6832/DI 102+



- 1 (ii) tax identification number.
- 2 (2) Comply with IC 31-25-4-31(c)(2). The child support bureau
- 3 established by IC 31-25-3-1 shall regularly make reports
- 4 submitted under IC 31-25-4-31(c)(2) ~~available~~ **accessible** to the
- 5 department or its agents for use only in tax judgment and levy
- 6 administration.
- 7 (d) The information required under subsection (b) must:
- 8 (1) be provided on a quarterly basis; and
- 9 (2) include the:
- 10 (A) name;
- 11 (B) address of record; and
- 12 (C) either:
- 13 (i) the Social Security number; or
- 14 (ii) tax identification number;
- 15 of individuals identified under subsection (b).
- 16 (e) When the department determines that the information required
- 17 under subsection (d)(2) is identical for an individual who holds an
- 18 account with a financial institution and an individual against whom a
- 19 levy may be issued by the department or a county treasurer, the
- 20 department or its agents shall provide a notice of the match, in
- 21 compliance with section 4 of this chapter, if action is to be initiated to
- 22 levy or encumber the account.
- 23 (f) This section does not preclude a financial institution from
- 24 exercising its right to:
- 25 (1) charge back or recoup a deposit to an account; or
- 26 (2) set off from an account held by the financial institution in
- 27 which the individual has an interest in any debts owed to the
- 28 financial institution that existed before:
- 29 (A) the state's levy; and
- 30 (B) notification to the financial institution of the levy.
- 31 (g) A financial institution ordered to block or encumber an account
- 32 under this section is entitled to collect its normally scheduled account
- 33 activity fees to maintain the account during the period the account is
- 34 blocked or encumbered.
- 35 (h) All information provided by a financial institution under this
- 36 section is confidential and is available only to the department or its
- 37 agents for use only in levy collection activities.
- 38 (i) A financial institution providing information required under this
- 39 section is not liable for:
- 40 (1) disclosing the required information to the department or the
- 41 child support bureau established by IC 31-25-3-1;
- 42 (2) blocking or surrendering an individual's assets in response to

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a levy imposed under this section by:

- (A) the department; or
- (B) a person or an entity acting on behalf of the department; or
- (3) any other action taken in good faith to comply with this section.

**(j) A person or an entity that is acting on behalf of the department is not liable for any action taken in good faith to collect the state's levy under this section unless:**

- (1) the action is contrary to the department's direction to the person or entity; or**
- (2) for information provided under this section, the person or entity acts with:**

- (A) deliberate ignorance of the truth or falsity of the information; or**
- (B) reckless disregard for the truth or falsity of the information.**

~~(j)~~ **(k)** The department or its agents shall pay a financial institution performing the data match required by this section a reasonable fee, as determined by the department, of at least five dollars (\$5) for each levy issued to the financial institution.

~~(k)~~ **(l)** This section does not prevent the department or its agents from encumbering an obligor's account with a financial institution by any other remedy available under the law.

SECTION 2. IC 22-4-29-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14. (a) The department shall operate a data match system with each financial institution doing business in Indiana.**

**(b) Each financial institution doing business in Indiana shall provide information to the department on all employers:**

- (1) that hold one (1) or more accounts with the financial institution; and**
- (2) that are subject to a warrant issued by the commissioner for failure to pay a final assessment for contributions, interest, penalties, and any associated collection costs.**

**(c) To provide the information required under subsection (b), a financial institution shall do one (1) of the following:**

- (1) Identify employers by comparing records maintained by the financial institution with records provided by the department by:**
  - (A) name; and**
  - (B) either:**

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(i) Social Security number; or

(ii) federal tax identification number.

(2) Comply with IC 31-25-4-31(c)(2). The child support bureau established by IC 31-25-3-1 shall regularly make reports submitted under IC 31-25-4-31(c)(2) accessible to the department or its agents for use only in the collection of unpaid final assessments described in subsection (b)(2).

(d) The information required under subsection (b) must:

(1) be provided on a quarterly basis; and

(2) include:

(A) the name;

(B) the address of record; and

(C) either:

(i) the Social Security number; or

(ii) the federal tax identification number;

of the employers identified under subsection (b).

(e) When the department determines that the information required under subsection (d)(2) is identical for an employer that holds an account with a financial institution and an employer that is subject to a warrant issued by the commissioner for failure to pay a final assessment for contributions, interest, penalties, and any associated collection costs, the department or its agents shall provide a notice of the match to the financial institution if action is to be initiated to issue a warrant to levy upon or encumber the account.

(f) This section does not preclude a financial institution from exercising its right to:

(1) charge back or recoup a deposit to an account; or

(2) set off from an account held by the financial institution in which the employer has an interest in any debts owed to the financial institution that existed before:

(A) the department's warrant; and

(B) notification to the financial institution of the department's warrant.

(g) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(h) All information provided by a financial institution under this section is confidential and is available only to the department or its agents for use only in the collection of unpaid final assessments described in subsection (b)(2).

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(i) A financial institution providing information required under this section is not liable for:

(1) disclosing the required information to the department or the child support bureau established by IC 31-25-3-1;

(2) blocking or surrendering an individual's assets in response to a levy imposed under this section by:

(A) the department; or

(B) a person or an entity acting on behalf of the department; or

(3) any other action taken in good faith to comply with this section.

(j) A person or an entity that is acting on behalf of the department is not liable for any action taken under this section in good faith to collect unpaid final assessments described in subsection (b)(2) unless:

(1) the action is contrary to the department's direction to the person or entity; or

(2) for information provided under this section, the person or entity acts with:

(A) deliberate ignorance of the truth or falsity of the information; or

(B) reckless disregard for the truth or falsity of the information.

(k) The department or its agents shall pay a financial institution performing the data match required by this section a reasonable fee, as determined by the department, of at least five dollars (\$5) for each warrant issued to the financial institution.

(l) This section does not prevent the department or its agents from encumbering an employer's account with a financial institution by any other remedy available under the law.

SECTION 3. IC 22-4-31-6, AS AMENDED BY P.L.108-2006, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If, after due notice, any employing unit defaults in the payment of any contributions or other money payments required by this article, the amount due may be collected by civil action in the name of the state of Indiana on the relation of the department. Such civil action is not to be considered as the exclusive method for collection of the contributions or money payments but is in addition to the method provided in IC 22-4-29-2 through ~~IC 22-4-29-12~~ **IC 22-4-29-14** and is to be brought only in such cases as the department may deem advisable in the interest of necessity and convenience.

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(b) Unless the employing unit prevails in a civil action brought under this chapter, the court may award costs, including reasonable attorney's fees, incurred by the state in bringing the action.

SECTION 4. IC 31-25-4-31, AS AMENDED BY P.L.103-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31. (a) The bureau shall operate a data match system with each financial institution doing business in Indiana.

(b) Each financial institution doing business in Indiana shall provide information to the bureau on all noncustodial parents who:

- (1) hold one (1) or more accounts with the financial institution; and
- (2) are delinquent.

(c) In order to provide the information required under subsection (b), a financial institution shall either:

- (1) identify noncustodial parents by comparing records maintained by the financial institution with records provided by the bureau by:

(A) name; and

(B) either Social Security number or tax identification number; or

- (2) submit to the bureau a report, in a form satisfactory to the bureau, that includes the Social Security number or tax identification number of each individual maintaining an account at the financial institution. **The reports submitted under this subdivision must be accessible to:**

(A) the department of state revenue established by IC 6-8.1-2-1 or its agents for use only in tax judgment and levy administration described in IC 6-8.1-8-8.7(b)(2); or

(B) the department of workforce development established by IC 22-4.1-2-1 or its agents for use only in the collection of unpaid final assessments described in IC 22-4-29-14(b)(2).

(d) The information required under subsection (b) must:

- (1) be provided on a quarterly basis; and

(2) include the:

(A) name;

(B) address of record; and

(C) either the Social Security number or tax identification number;

of an individual identified under subsection (b).

(e) When the bureau has determined that the information required under subsection (d)(2) is identical for an individual who holds an

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1 account with a financial institution and an individual whose name  
 2 appears on the quarterly list prepared by the bureau under section 30  
 3 of this chapter, the bureau shall provide a notice of the match if action  
 4 is to be initiated to block or encumber the account by establishing a  
 5 lien for child support payment to the:

6 (1) individual; and

7 (2) financial institution holding the account.

8 (f) The notice under section (e) must inform the individual that:

9 (1) the individual's account in a financial institution is subject to  
 10 a child support lien; and

11 (2) the individual may file an appeal with the bureau within  
 12 twenty (20) days after the date the notice was issued.

13 (g) The bureau shall hold a hearing under 470 IAC 1-4. The  
 14 department's final action following a hearing held under this subsection  
 15 is subject to judicial review as provided in 470 IAC 1-4.

16 (h) The state's lien on assets under this section is subordinate to any  
 17 prior lien perfected by:

18 (1) a financial institution; or

19 (2) another legitimate lien holder.

20 (i) A lien issued under this section remains in effect until the earliest  
 21 of:

22 (1) one hundred twenty (120) days after issuance;

23 (2) the date the asset on which the lien is issued is surrendered; or

24 (3) the date the lien is released by an action of the bureau.

25 (j) This section does not preclude a financial institution from  
 26 exercising its right to:

27 (1) charge back or recoup a deposit to an account; or

28 (2) set off from an account held by the financial institution in  
 29 which the noncustodial parent has an interest in any debts owed  
 30 to the financial institution that existed before:

31 (A) the state's lien; and

32 (B) notification to the financial institution of the child support  
 33 delinquency.

34 (k) A financial institution ordered to block or encumber an account  
 35 under this section is entitled to collect its normally scheduled account  
 36 activity fees to maintain the account during the period the account is  
 37 blocked or encumbered.

38 (l) All information provided by a financial institution under this  
 39 section is confidential and is available only to the bureau or its agents  
 40 for use only in child support enforcement activities.

41 (m) A financial institution providing information required under this  
 42 section is not liable for:

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(1) disclosing the required information to the bureau, **the department of state revenue established by IC 6-8.1-2-1, or the department of workforce development established by IC 22-4.1-2-1;**

(2) blocking or surrendering any of an individual's assets in response to a lien imposed by:

(A) the bureau under this section; or

(B) a person or entity acting on behalf of the bureau; or

(3) any other action taken in good faith to comply with this section.

(n) The department shall pay a financial institution performing the data match required by this section a reasonable fee for providing the service that does not exceed the actual cost incurred by the financial institution.

(o) This section does not prevent the bureau or its agents from encumbering an obligor's account with a financial institution by any other remedy available for the enforcement of a child support order.

SECTION 5. IC 34-30-2-16.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.8. IC 6-8.1-8-8.7 (Concerning actions taken to collect tax judgments and levies).**

SECTION 6. IC 34-30-2-86.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 86.7. IC 22-4-29-14 (Concerning actions taken to collect unemployment insurance assessments.)**

SECTION 7. **An emergency is declared for this act.**

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## SENATE MOTION

Madam President: I move that Senator Weatherwax be removed as second author of Senate Bill 345.

WEATHERWAX

## SENATE MOTION

Madam President: I move that Senator Jackman be removed as author of Senate Bill 345 and that Senator Weatherwax be substituted therefor.

JACKMAN

## COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 345, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 2. IC 22-2-5-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.8. As used in this chapter, "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.**

SECTION 3. IC 22-2-5-1, AS AMENDED BY P.L.51-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana (**collectively, the "employer"**) shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. **In addition, an employer and an employee may agree to any other pay period, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. ~~Any contract in violation of this subsection is void.~~

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(b) Payment shall be made for all wages earned ~~to in a date pay period~~ not more than ten (10) business days ~~prior to the date of payment~~. ~~However, this subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeal any law providing for payments at shorter intervals.~~ **following the close of the pay period, unless an employer and an employee agree to a different payment date, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** However, if an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

- (1) ten (10) business days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 345 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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#### SENATE MOTION

Madam President: I move that Senate Bill 345 be amended to read as follows:

Page 3, delete lines 24 through 42.

Page 4, delete lines 1 through 18.

Renumber all SECTIONS consecutively.

(Reference is to SB 345 as printed January 25, 2008.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 345, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SUMMERS, Chair

Committee Vote: yeas 8, nays 0.

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